SUPREME COURT, U.S.
FILED
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No.

IN THE

SUPREME COURT of the UNITED STATES

RAYMOND DICK,

Petitioner,

v.

HOWARD E. TOWLES,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court of Appeals

PETITION FOR WRIT OF CERTIORARI

RAYMOND DICK
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QUESTION PRESENTED FOR REVIEW

1. Did the district court error by failing to consider the question whether a contract is made is a federal question and dismissed the complaint for lack of jurisdiction in violation of the Fourteenth Amendment ?

2. Did the district court error in dismissing the cause, where the complaint raised a legitimate property claim of entitlement within the Fourteenth Amendment?

3. Did the Court of Appeals error in affirming the decision of the district court, where the district court erred in relying on, a void order, a summary judgment that was not an adjudication on the merits and denied plaintiff's motion to vacate the dismissal judgment based upon pure speculation, in violation of Rule 52 and the First and Fourteenth Amendment?

LIST OF PARTIES

All parties to the proceeding in the United States District and Appeals Court, which render the judgment sought to be reviewed by this Court are named in the Petition.

CORPORATE DISCLOSURE STATEMENT

Raymond Dick is not a corporation for purpose of the Rule.

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PETITION FOR WRIT OF CERTIORARI

Raymond Dick respectfully, prays that a Writ of Certiorari be issued to review the judgment of the order of the United States District Court of Illinois and the Seventh Circuit, or in the alternative remand this case to the District Court to exercise jurisdiction for the reason below.

OPINIONS BELOW

The Order (App. 1-6) and Final Judgment (App. 8-9) of the District Court are both unpublished. The Order contains a brief Opinion. (App. 9) The Opinion of the Seventh Circuit is reported as No. 02-4120. (App. 11-13)

BASIS FOR JURISDICTION

Raymond Dick files his complaint on the basis that: The right to petition for redress of grievances is guaranteed by the First Amendment; the question whether a contract is made is a federal question; property interest is a legitimate claim of entitlement within the Fourteenth Amendment; and that minimum [procedural] requirements [are] a matter of federal law. (App. 17-21) On May 7, 2002, the District Court issued a Rule to Show Cause why the case should not be dismissed for lack of Federal Jurisdiction. (App.3) Mr.

Dick filed a Response to Order of Court, on May 29, 2002 (App. 22-24), and the Court dismissed the complaint on June 4, 2002. (App. 5) Mr. Dick filed a Motion to Vacate the dismissal Order on June 10, 2002. (App. 25-29) On June 18, 2002, the trial Court gave both parties leave to file responsive motions, and continued the Motion to Vacate to August 21, 2002.(App. 7) On July 17, 2002, Mr. Dick filed a Response to Order of June 18, 2002, and to Mr. Towles motion to dismiss.(App. 30-34) A Final judgment denying the Motions, was entered on October 29, 2002. (App. 8-9)

A timely notice of appeal was filed on November 27, 2002, and the Court of Appeals for the Seventh Circuit affirmed on June 19, 2003 (App. 11-13), and denied Mr. Dick's petition for Rehearing (App.35-42), on July 31, 2003. (App. 14-15) This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

CONSTITIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. I.

> Section one of the Fourteenth Amendment states: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

STATEMENT OF PERTINENT FACTS, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW

Petitioner, Raymond Dick, (hereinafter " Mr. Dick") filed a three Count complaint against Respondent, Howard E. Towles (hereinafter "Mr. Towles"). Count I has ¶¶ 1-79; Count II has ¶¶ 1-60 and Count III has ¶¶ 1-110. Mr. Dick will address those portions of the complaint the Courts, below, may have simply referred to in passing. (App.17-21)

The basis of Mr. Dick's suit is that Mr. Dick and Mr. Towles had freely entered into an Oral and Written Contract agreement. Mr. Dick has a legitimate claim of entitle-

ment in the Oral and Written Contract agreement, pursuant to 735 Ill. Comp. Stat. Ann. 5/13-214.3 (West. 2002), protected by the due process clause of the Fourteenth Amendment. (App. 17) Mr. Dick also alleged, Mr. Towles breached the oral and written contract, conspired with his agent Mr. Carl M. Walsh (hereinafter "Mr. Walsh"), in committing fraud upon the Court and Mr. Dick, as a basis to avoid liability for the admitted breach of the contracts. (App. 19-20)

Mr. Dick Response to Rule to Show Cause, asserts in part that: the question whether plaintiff has a legitimate claim of entitlement, is a federal question under 28 U.S.C. §§ 1331, 1367; [e]ven though state law creates, [a party's] cause of action, its cause might still arise under the law of the United States... ; minimum [procedural] requirements [are] a matter of federal law... and Mr. Dick did not have a full and fair opportunity to litigate his claim of entitlement... (App. 22-23). At the Rule to Show Cause hearing, Mr. Dick testified:

> I filed the complaint in the state court, and the state refused to address any of the issues which were raised by petitioner in the state court. (App. 4) [W]here the state provision or the state procedures are inadequate to protect the federal rights, the plaintiff has a right to bring the case to the federal court. (App. 4) Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation. (App. 5)

The District Court dismissed the complaint for reasons stated on the record.[1] (App. 1)

Mr. Dick filed a motion to vacate the dismissal order, in the District Court, reasserting his claims as stated above. (App. 25-29) Thereafter, the District Court gave Mr. Towles leave to file a motion to dismiss the complaint and Mr. Dick time to respond. (App. 7)

Mr. Dick filed a Response to Order of June 18, 2002 and to Mr. Towles motion to dismiss. Mr. Dick request the Court sustain jurisdiction [restating his claims above] and reconsider the Order of June 18, 2002 because:

> The June 18th order conflict with the June 4, 2002 order...; Mr. Towles failed to file his appearance as required by Rule12(a) (FRCP); Leave to Appeal to the Illinois Supreme Court was denied, April 3, 2002; The District Court have Jurisdiction over state law claims that form part of the same case or controversy; res judicata does not apply to this case; the party asserting the preclusion bears the burden of showing with clarity what war determined by the prior judgment; a vacated order previously entered... is the same as if the order had never exist; it was not the plaintiff's burden to produce evidence concerning

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[1] The Court's reason: I'm going to dismiss this action on my own motion, for lack of jurisdiction. There is no state action involved here... if there was state action, then this matter would be precluded by res judicata. This complaint does not state a basis for lack of due process. (App. 5)

> claims as to which defendant's motion for summary judgment was entered; and summary judgment was not an adjudication on the merits. (App. 30-34)

The District Court substituted Mr. Dick's allegations for its own, without a hearing, and substituted its prior reason (see footnote 1), denying Mr. Dick's motion to vacate. (App. 8-10)

Mr. Dick filed a, timely, notice of Appeal. (App. 12) The Seventh Circuit affirmed, adopting the district court's substitution of Mr. Dick's allegation. (App. 11-13) Mr. Dick's, timely, petition for rehearing (App.35-42), was denied. (App. 14-15)

ARGUMENT IN SUPPORT OF GRANTING WRIT

I. THE WRIT SHOULD BE GRANTED BECAUSE THE DISTRICT COURT ERRED BY FAILING TO CONSIDER THE QUESTION WHETHER A CONTRACT IS MADE IS A FEDERAL QUESTION AND DISMISSED THE COMPLAINT FOR LACK OF JURISDICTION, IN VIOLATION OF THE FOURTEENTH AMENDMENT.

This case involves, whether the District Court and the Seventh Circuit is allowed to substitute a litigant's issue, for its own, to deny jurisdiction, disregard the federal question, including this Court decision, the state law claims, in

conflict of the First and Fourteenth Amendment to the United States Constitution. Specifically, this case address, the question of neutrality [which] has been jealously guarded by this Court in Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980). See Part III § A of the Argument below.

This Court, in Romein, held that: The question whether a contract was made is a federal question for purpose of contract clause analysis. General Motors Corp. v. Romein, 503 U.S. 181, 187 (1992), and whether it turn on issues of general or local law, we can not surrender the duty to exercise our own judgment. *Id.*

In Long v. Shorebank Development Corp., 182 F.3d 548, 554 (7th Cir. 1999), the Court held that: When revewing a dismissal for lack of subject matter jurisdiction, we note that a district court must accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff. *Id.*

Count I, II and III of Mr. Dick's Complaint alleges Mr. Dick and Mr. Towles had freely entered into an Oral and Written Contract agreement. (App. 17 & 19) The District Court *sua sponte* order dismissing the complaint is devoid of any consideration as to the question whether a contract was made is a federal question. (App. 5) To allow the District Court to proceed in such a manner would be to condone a violation of the fundamental requirement of due process—the opportunity to be heard.... It is an opportunity which must be granted at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 308 U.S. 545, 552 (1965). [T]he Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits

fairly judge. Logan v. Zimmerman Brush Company, 455 U.S. 422, 433 (1982).

II. THE WRIT SHOULD BE GRANTED BECAUSE THE DISTRICT COURT ERRED IN DISMISSING THE CAUSE WHERE THE COMPLAINT RAISED A LEGITIMATE PROPERTY CLAIM OF ENTITLEMENT WITHIN THE FOURTEENTH AMENDMENT.

This Court has long held that, Property for purpose of the due process clause of the fourteenth amendment, is a legitimate claim of entitlement. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972). A claim of entitlement is defined by existing rules of understanding that stems from an independent source such as state law. *Id.*

The Seventh Circuit follow the holding in Board of Regents with respect that a property interest protected by the fourteenth amendment arise from two sources: (1) the Due Process Clause itself and (2) the law of the state. Easter House v. Felder, 910 F. 2d 1387, 1395 (7th Cir. 1990). And that Contract rights are a kind of property. Weinstein v. University of Illinois, 811 F.2d 1091, 1096 (7th Cir. 1987).

Illinois law provides that, the injuries resulting from legal malpractice are not personal injuries but pecuniary injuries to intangible property interest. Glass v. Pitler, 276 Ill. App. 3d 344, 349, 657 N.E. 2d 1075 (1st Dist. 1995).

Count I, II and III of Mr. Dick's Complaint alleges Mr. Dick and Mr. Towles had freely entered into an Oral And Written Contract agreement. Mr. Dick has a legiti-Mate claim of entitlement in the Oral and Written Contract Agreement, pursuant to 735 ILCS 5/13-214.3, protected by The due process clausw of the Fourteenth Amendment. (App 17 & 19)

The District Court *sua sponte* dismissal order hereto is devoid of any consideration of Mr. Dick's property interest protection claim within the fourteenth amendment. (App. 5) Thus, conflicting with the fundamental requirement of due process. Armstrong, 308 U.S. at 552; Logan, 455 U.S. at 433.

III. THE WRIT SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT ERROR IN RELYING ON A VOID ORDER, A SUMMARY JUDGMENT NOT ON THE MERITS, AND DENIED THE MOTION TO VACATE BASED UPON PURE SPECULATION IN VIOLATION OF, RULE 52, THE FIRST AND FOURTEENTH AMENDMENT.

A. THE RIGHT TO PETITION FOR REDRESS OF GRIEVANCE.

This Court in McDonald v. Smith, 472 U.S. 487 (1985), held that:

> The First Amendment guarantees the right of the people...to petition the Government for a redress

> of grievances. The right to petition is cut out from the same cloth as the other guarantees of the amendment, and is an assurance of a particular freedom of expression. *Id.* at 482.

This Court in Smith concluded that: [F]iling a complaint is a form of petition activity. 472 U.S. at 484. And In Moses H. Cone Memorial Hospital v. Mercury Construction, 460 U.S. 1 (1983), this Court held that:

> [A]ssuming that for some unexpected reason the state forum does turn out to be inadequate in some respect... It is true that Mercury could seek to return to federal court if it proved necessary; but that would be equally true if the District Court had dismissed the case. *Id.* at 28.

Mr. Dick argues, I filed the Complaint in the state court, and the state refused to address any of the issues which were raised by petitioner in the state court. We went through all the procedures (App. 4) [W]here the state provision or the state procedure are inadequate to protect the federal right, the plaintiff has a right to bring the case to the federal court. (App. 4)

The District Court *sua sponte* dismissal reason, is devoid of any consideration of Mr. Dick's First and Fourteenth Amendment rights. (see footnote 1) Instead, the District Court substituted Mr. Dick's allegations, above, for its own. The Seventh Circuit affirmed and adopted the substituted reason stating:

> Mr. Dick has now returned to federal court with... two new claims alleging: (1) Mr. Towles and his lawyer committed fraud by lying in the state proceedings; and (2) that the state court violated his due process rights under the Fourteenth Amendment. (App. 11)[2]

Notably, nowhere in Mr. Dick's argument above, or in his complaint, did he allege the state court violated his due process right under the Fourteenth Amendment. This conjecture and substitution of Mr. Dick's allegation is prejudical, biased and conflicts with the fair trial requirement of due process in In Re Murchison, 345 U.S. 133, 137 (1955); Marshall v. Jerrico, Inc., 446 U.S. 238 (1980); Anderson v. Sheppard, 856 F. 2d 741, 746 (6th Cir. 1988).

This Court in Marshall, recognized that the:

> [R]equirement of neutrality in adjudicative proceedings served duel interests of equal preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done, by ensuring that no person will be deprived of his interest in the absence of a proceeding in which he may present his case with assurance that the arbite is

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[2] The Seventh Circuit concluded that Rooker-Feldman doctrine (Dist. of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), Precludes district courts from exercising jurisdiction over claims that are inextricably linked with a judgment of a state court. (App. 12-13)

> not predisposed to find against him. *Id.* at 242 (quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 172 (1951) (Frank furter, J.,concurring) (emphasis supplied).

Thus, the neutrality requirement not only guarantees that each litigant receives a fair trial as determined by those learned in the law, but also engenders the faith integrity of this country's tribunals that is so unquestionably vital to this government's existence. Anderson, 856 F. 2d at 746. And in Murchison, this Court held that, Fair trials are too important a part of our free society to let prosecuting judges be trial judge of the charges they prefer: Murchison, 345 U.S. at 137.

B. THE EXCEPTION TO ROOKER-FELDMAN

In Long, the Seventh Circuit adopted Wood v. Orange County, 715 F. 2d 1543, 1547 (11th Cir. 1983), and addressed the exception to the Rooker-Feldman doctrine, held that:

> [T]he Rooker-Feldman doctrine has been rejected based on the reasoning set forth in Wood, the federal litigant have pointed to some factors independent of the actions of the opposing party that precluded the litigants from raising their federal claims during the state court proceedings. Typically, either some action taken by the state court... that the litigants are incapable of overcoming in order to prevent certain claims to the state court. Long, 182 F. 3d at

558.[3] (collecting authorities)

In Brokaw v. Weaver, 305 F. 3d 660 (7th Cir. 2002), the Seventh Circuit noted that a federal plaintiff:

> can without being blocked by the Rooker-Feldman doctrine, sue to vindicate [an independent] right and show as part of his claim for damages that the violation caused the decision to be adverse to him and did him harm. Brokaw, 305 F. 3d at 667.

In Pennzoil Co. v. Texaco Inc., 481 U.S. 1 (1987), Justice Brennan, the author of Feldman, stated his belief in Pennzoil that the inferior federal courts are not forced into this impermissibly appellate review when the constitutional claims are separate from and collateral to the merits of the state-court judgment. Pennzoil, 481 U.S. at 21 (Brennan J., concurring) (citation omitted).[4]

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[3] The Seventh Circuit noted that [a]n issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in the state court proceedings. Absent such an opportunity, it is impossible to conclude that the issue was inextricably intertwined with the state court judgment. This limitation on the applicability of Rooker-Feldman was first set forth in Wood. Long, 182 F. 3d at 558, quoting Wood, 715 F. 2d at 1547.

[4] It is clear, though, that a constitutional claim is not inextricably intertwined merely because it could have been raised, but not, in the earlier state proceeding. This conclusion is further buttressed by Pennzoil, where separate concurrences by a majority of the Court indicated Rooker-Feldman would not automatically bar a federal claim that was not raised in the state court. See Pennzoil, 481U.S. at 18(Scaliar & O'Connor, J J., concurring); id. at 21 (Brennan, J. Concurring); *id.* at 31 n. 3 (Stevens, J., concurring).

In Feldman, this Court noted what constitute the essence of a judicial proceeding held that:

> The court had adjudicated Feldman's claim of a present right to admission to the bar... and rejected it. This is the essence of a judicial proceeding. 460 U.S. at 481.

C. THE SUMMATY JUDGMENT WAS NOT AN ADJUDICATION ON THE MERITS.

This Court in Kramer v. Chemical Construction Corp, 456 U.S. 461 (1982) specifically state:

> It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in determinating the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment was taken. *Id.* at 481-82.

Illinois Supreme Court disagree with the District Court and the Seventh Circuit in this case, that a summary judgment, by definition, mean a judgment on the merits in Downing v. Chicago Transit Authority, 162 Ill. 2d 70, 642 N.E. 2d 456 (1994).[5]

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[5] Epps v. Creditnet, Inc, 320 F. 3d 756, 758-59 (7th Cir. 2003). Epps is not applicable to this case. Epps is an Indiana case where judgment was entered on the merits and the plaintiff asks the district court to set aside the judgment of the Small Claims Court.

In Downing, the Court determined whether summary judgment was an adjudication on the merits stated: it cannot ignore the basis on which he summary judgment was granted. Downing, 162 Ill. 2d at 77. The Court went on to examine the basis for granting summary judgment and held that when the basis for granting summary judgment bears no relationship to the actual merits of the case, it would be inappropriate to apply the doctrine of res judicata... Downing, 162 Ill. 2d at 77.

This Court in Pullman-Standard v. Swint, 456 U. S. 273 (1982) concluded that:

> [F]actfinding is the basic responsibility of the district courts, rather than appellate Courts, and... the Court of Appeals should not have resolved in the first instant [a] factual dispute which had not been considered by the district court. *Id.* at 291-92.

The Seventh Circuit recognized that it was not the plaintiff's (Mr. Dick) burden to produce evidence concerning which claim summary judgment was entered for the defendant (Mr. Towles) See Malhotra v. Cotter & Co., 885 F. 2d 1305 (7th Cir. 1989).[6]

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[6] In Malhotra, the Court held that, [I]t was not Malhotra's burden to produce evidence concerning claims as to which Cotter's sole grounds for summary judgment was the statute of limitations. *Id.* at 1310. The party asserting the preclusion bears the burden of showing with clarity and certainty what was determined by the prior judgment. Jones v. City of Alton, Illinois, 757 F. 2d 878, 885 (7th Cir. 1985).

In Jones, the Seventh Circuit held that:

> a court cannot invoke the rule of estoppel by verdict or res judicata on pure speculation as to the finding of the trial court in prior litigation. Jones, 757 F. 2d at 885.

Mr. Towles did not bear his burden of showing, with clarity and certainty, what was determined in the summary judgment. Mr. Towles made an untimely request to file an appearance. (App. 3 & 27) The District Court denied Mr. Towles motion to dismiss. (App. 9) Mr. Towles declined to file an appearance in the Seventh Circuit. (App. 35)

Mr. Dick's Complaint, motions and affidavit stand uncontradicted . (App. 17-42)

> The District Court, made no finding of facts, what issues, if any , of Mr. Dick were inextricably intertwined or adjudicated by the state court judgment. However, as a pretext to apply the Rooker-Feldman doctrine, the District Court Subsutituted Mr. Dick's allegation for its own. The Seventh Circuit affirmed, adopted the pretext as its own, and in addition made its own finding concluding that Mr. Dick's new fraud claim—that Mr. Towles and his lawyer won by deceiving the circuit court—falls into this category. (App. 13)

Thus, the Seventh Circuit ruling is that the fraud claim was decided by the state court.[7] This ruling is based on pure speculation and conflict with Pullman-Standard, the Exception Rule in Long, Brokaw, and Wood. (See Part III §B Argument above), the Requirement of Neutrality, the integrity of the country's tribunals, and the First and Fourteenth Amendment.

D. THE DISTRICT COURT MISSAPPREHENSION OF THE DUE PROCESS CLAIM.

This Court held that [T]o determine whether a constitutional violation has occurred, it is necessary to ask: (1) what process the state provided; and (2) whether it was constitutionally adequate. Zinermon v. Burch, 494 U.S. 113, 126 (1990).

The Seventh Circuit held that a due process claim is insufficient where it failed to allege that the available state remedies were inadequate to protect [the property] rights. Doherty v. City of Chicago, 75 F. 3d 318, 322 (7th Cir. 1996), and required that, in addition to alleging that the decision was arbitrary and irrational, the plaintiff must show also either a separate constitutional violation or the inadequacy of state law remedies. 75 F. 3d at 325.

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[7] Mr. Dick argues. I filed the Complaint in the state court, and the state refused to address any of the issues which were raised by Petitioner in the state court. [W]e went through all the procedures (App. 4). Mr. Dick's petition for leave to appeal to the Illinois Supreme Court was denied April 3, 2002(App. 31).

This Court noted that, minimum [procedural] requirements [are] a matter of federal law... Logan, 455 U.S. at 432. What the Fourteenth Amendment does require, however, is an opportunity...granted at a meaningful time and in a meaningful manner. Armstrong, 380 U.S. at 552.

It was such an opportunity, Mr. Dick was denied. See footnote 7.

This Court in City of Chicago v. Intern. College of Surgeons, 552 U.S. 156 (1997), held that:

> [T]his Court has long adhered to the principles of pendent and ancillary jurisdiction by which the federal courts' original jurisdiction over federal questions carries with it jurisdiction over state law claims that derive from a common nucleus of operative facts, such that the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional case. *Id.* at 164-65 (quoting United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).

Mr. Dick's property interest and minimum [procedural] requirements [are] not based upon Mr. Towles breach of duty, but on the Fourteenth Amendment. The question whether a Contract was made, is a federal question for purpose of the contract clause. Thus, invoking §1331. (App. 36-37) The Seventh Circuit disregarded the federal questions, including Mr. Dick citing City of Chicago, 552 U.S. 156, and substituted Mr. Dick's argument for its own, held that:

> What Mr. Dick seems to suggest by citing 28 U. S. §1367 is that his newly asserted claim of due process violation... triggered federal question over his contract claims...(App.12)

Mr. Dick's Complaint does, in fact, raise serious question, both of law and fact, which the district court can decide only after it has assumed jurisdiction over the controversy. Bell v. Hood, 327 U. S. 678, 683-84 (1946).

The District Court and the Seventh Circuit should not be allowed to deny any litigant relief by violating this Court's ruling and the First and Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted, or in the alternative remand this case to the District Court to exercise jurisdiction over the cause.

Respectfully submitted

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Chicago, Ill. 60649
(773) 768-2399

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYNOND DICK,

Plaintiff,

VS. CASE NO. 02 C2909

HOWARD E. TOWLES,

Defendant.

_____/

MINUTE ORDER

Rule to show cause hearing held. After review of the plaintiff's response to the Rule to Show Cause and for the reasons stated on the record. On the Court's own motion, this action is dismissed for lack of jurisdiction. This case is closed. Any pending motions are moot and terminated.

DATE ORDER issued June 4, 2002.
DOCKET ENTRY June 7, 2002.
Docketing to Mail notices

/s/ David H. Coar
DAVID H. COAR
DISTRICT COURT JUDGE

App. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND DICK,

Plaintiff,

VS.

HOWARD E. TOWLES,

Defendant

NO. 02 C2909
Chicago, Illinois
June 4, 2002
9:00 am
Motion

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID H. COAR

APPEARANCE:

Pro Se Plaintiff:

MR. RAYMOND DICK
2520 E. 74th St.
Chicago, Ill. 60649

For the Defendant:

MR. CARL M. WALSH
39 South LaSalle St
Suite 1400
Chicago, Ill. 60603

TRACEY D. McCULLOUGH, CSR, RPH
OFFICIAL COURT REPORTER
219 South Dearborn Street, Suite 1420
Chicago, Illinois 60604
(312) 922-3716

THE COURT: 02 C2909, Dick versus Towles.

MR. DICK: Good morning, Your Honor.

THE COURT: Good morning.

MR. DICK: Raymond Dick, the plaintiff on his own behalf.

THE COURT: All right.

MR. WALSH: Judge, I'm Carl M. Walsh. I'm going to be asking leave to file an appearance on behalf of Mr. Towles.
Judge, I had in preparation an appearance and motion to dismiss based on jurisdiction and res judicata. However, I went out sick last week, and this is my first morning back. So I have not been able to get them over.

THE COURT: All right. This is here on my motion for rule to show cause why the case shouldn't be dismissed for lack of jurisdiction. Mr. Dick has filed a response that really doesn't address it.

Mr. Dick, you cite to a number of provisions of Illinois law which have nothing to do with federal jurisdiction. As far as I can tell, the basis is that you claim due process, a due process right. Let me read you what --- under the 14th Amendment let me read you what the 14th Amendment says.

"No state make or enforce any law which shall abridge the privilege or immuities of citizens of the United

state deprive any person of life, liberty, or property without due process of law."

The defendant here is not the state, so I don't understand --- it may be possible for an individual to deprive somebody of due process and in rare circumstances. I don't understand that those circumstances are present here in an action by Mr. Towles as to how he deprived you of due process in the sense that there was state action.

MR. DICK: May I respond, Your Honor.

THE COURT: Yes sir.

MR. DICK: Your Honor, nowhere in their motion did it say Mr. Towles deny me of any due process. Under Lumen Construction Company, a Seventh Circuit case, 780 F.2d, the Court clearly states that where the state provision or the state procedures are inadequate to protect the federal rights, the plaintiff has a right to bring the case to the federal court. The court also cites---

THE COURT: Wait. Tell me why the state procedures were inadequate. Simply because you lost in the state?

MR. DICK: Your Honor, I filed the complaint in the state court, and the state refused to address any of the issues which were raised by the petitioner in the state court. We went through all the procedures. There are cases which the court also addressed

those issues. In Lumen the Court also clearly stated citing Allen versus McCurry, the Court stated this: Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedure folled in prior litigation.

THE COURT: I see. All right I'm going to grant --- I'm going to dismiss this action on my own motion for lack of jurisdiction. There is no state action involved here. Moreover, if there was state action, this matter would be precluded by res judicata. This complaint does not state a basis for lack of due process.

MR. DICK: Your Honor, I haven't received any motion from the defendant or from the Court stating that the Court is going to consider res judicata as a basis for ---

THE COURT: Did you not understand my ruling, sir?

MR. DICK: I understand your ruling.

THE COURT: The case is dismissed.

MR. DICK: Thank you, Your Honor.

MR. WALSH: Thank you very much, Judge.

MR. DICK: Your Honor, may I ask one question. Would you give me a copy of the order or you'll send it out?

THE COURT: It will be mailed out.

MR. DICK: Thank you.

CERTICATE

I hereby certify that the foregoing is a true and correct transcript of the aforesaid matter.

/s/ Tracey D. McCullough
TRACEY D. McCULLOUGH
OFFICIAL COURT REPORTER

App. 7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND DICK,

Plaintiff,

VS.

CASE NO. 02 C2909

HOWARD E. TOWLES:

Defendant:

_____/

MINUTE ORDER

The plaintiff's motion to vacate dismissal judgment is entered and continued to 8/21/02 at9:00 a.m. The defendant is given to 6/25/02 to file a motion to dismiss; plaintiff is given to 7/17/02 to file a response to the motion to dismiss; defendant to file a reply brief in support of motion to dismiss by 7/31/02; the motion to dismiss is set for hearing on 8/21/02 at 9:00 a.m. Mailed notice

ORDER of June 18, 2002
DOCKET ENTRY JUNE 19, 2002
Docketing to Mail notices

/s/ Daviv H. Coar
DAVID H. COAR
DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND DICK

Plaintiff,

VS. CASE NO. 02 C2909

HOWARD E. TOWLES:

Defendant.

_____/

MINUTE ORDER

Raymond Dick ("Plaintiff") filed a three-count complaint in this Court against Howard E. Towles ("Defendant") based on breach of oral and written contract. Plaintiff claims have some history in this Court as well as in the state court system. On June 30, 1993, the Seventh Circuit dismissed Plaintiff's complaint, which alleged the same breach of contract claims, for lack of jurisdiction. Plaintiff then filed a complaint in the Circuit Court of Cook County. The Circuit Court granted summary judgment for Defendant and the Illinois Appellate Court affirmed the order on December 28, 2001. Plaintiff, unsatisfied with the result in the state court, filed this action in federal court on April 23, 2002, On June 4, 2002, this Court *sua sponte* dismissed this action for lack of jurisdiction. On June 10, 2002, assuming this Court dismissed this action on res judicata grounds, Plaintiff filed a motion to vacate the dismissal judgment. On June 25,

2002, Defendant filed a motion to dismiss the complaint based on res judicata. For the following reasons, Plaintiff's motion to vacate the dismissal judgment is denied and Defendant's motion to dismiss is denied as moot.

Plaintiff argues that this Court has jurisdition over these claims under 28 U.S.C. && 1331 and 1367 because Plaintiff is alleging that the state remedies were arbitrary, irrational, and inadequate to protect his property rights that derived from the alleged breach of contracts. Contrary to Plaintiff's' belief, however, the Rooker-Feldman doctrine bars this Court from hearing Plaintiff's claims. The Rooker-Feldman doctrine precludes lower federal court jurisdiction over claims seeking review of state court judgment...[because] no matter how erroneous or unconstitutional the state court judgment may be, the Supreme Court of the United States is the only federal court that could have jurisdiction to review a state court judgment. Brokaw V. Weaver, 305 F.3d 660, 664 (7th Cir. 2002). Generally speaking, if the complaint attacks the state court judgment, then Rooker-Feldman bars subject matter jurisdiction; if the plaintiff attempts to relitigate the case and by pass the state court judgment, the federal court has jurisdiction, but res judicata bars the suit. Id. At 664 n.4.

In this case, Plaintiff argues that he was deprived of due process as a result of the state court decision because the state law remedies were arbitrary, irrational and inadequate. Thus, Plaintiff's alleged constitutional harm results from the state court decision and he attempts to attack that decision in this Court, which, under Rooker-Feldman, he cannot do. This Court DENIES Plaintiff's motion to vacate the dismissal judgment and DENIES as moot Defendant's motion to dismiss. The action is terminated.

DATE issued October 29, 2002.
DOCKET ENTRY October 30, 2002
Docketing to Mail notices

/s/ David H. Coar
DAVID H. COAR
DISTRICT COURT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RAYMOND DICK,

Plaintiff-Appellant,

VS. CASE NO. 02-4120

HOWARD E. TOWLES,

Defendant-Appelle.

_____/

ORDER

Raymond Dick insists that Howard Towles twice breached a contractual duty to act as Mr. Dick's attorney in 1992. That same year, Mr. Dick sued Mr. Towles in federal court, but Mr. Towles prevailed after a jury trial. On appeal, we vacated the judgment and ordered the district court to dismiss on remand for lack of subject matter jurisdiction. Mr. Dick then sued Mr. Towles in state court. The Circuit Court of Cook County ultimately granted summary judgment for Mr. Towles, and that ruling was affirmed by the Illinois appellate court. Mr. Dick has now returned to federal court with his same 1992 breach-of-contract claims plus two new

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*Mr. Towles did not respond to our order to file a responsive brief, and accordingly this appeal has been submitted without the filing of a brief by the appellee... Thus, the appeal is submitted on the brief and the record. See. Fed. R. App. P. 34(a)(2).

claims alleging that Mr. Towles and his lawyer committed fraud by lying in the state court proceedings, and that the state court's decision violated his due process rights under the Fourteenth Amendment. The district court *sua sponte* dismissed Mr. Dick's complaint for lack of subject matter jurisdiction and denied his motion for reconsideration. Mr. Dick then filed a timely notice of appeal.

As should have been apparent to Mr. Dick when we previously directed the district court to dismiss his contract action, there is no basis for federal-court subject matter jurisdiction over Mr. Dick's claims that Mr. Towles breached a duty to represent him. Allegations that a lawyer breach a contract obligation to his client implies state, not federal, law, see, e.g., 735 Ill. Comp. Stat. Ann. 5/13-214. 3(b) (West. 2003), and no federal question jurisdiction, see 28 U.S.C. § 1331, is absent. Mr. Dick has never contended that the diversity jurisdiction, 28 U.S.C. § 1332, would afford a means to litigate these state claims in federal court, and there exists no other independent basis of federal subject matter jurisdiction.

What Mr. Dick seems to suggest by citing 28 U.S.C. § 1367 is that his newly asserted claim of a "due process" violation in the state litigation triggered federal question jurisdiction that in turn provides supplemental jurisdiction over his contract claims. The district court, however, did not have jurisdiction over Mr. Dick's "due process" claim. The claim is a thinly disguised effort to overturn the adverse Illinois judgment, and as the district court explained, federal courts other than the Supreme Court cannot review state decisions like the one in favor of Towles. E.g., Manley v. City of Chicago, 256 F. 3d 392, 396 (7th Cir. 2001). Moreover,

this principle, known as the Rooker-Feldman doctrine, see Dist. of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), also precludes district courts fron exercising jurisdiction over claims that are inextricably linked with a judgment of a state court. Epps v. Credinet, Inc., 320 F.3d 756, 748-59 (7th Cir. 2003) (collecting cases). Mr. Dick's fraud claim--that Mr. Towles and his lawyer won by deceiving the circuit court--falls into this category, and so it too is barred by Rooker-Feldman doctrine even if there were some way to label it as a federal claim. Accordingly, Mr. Dick's new claims are properly in federal court, and so they cannot serve as a hook to bring along his contract claims.

The judgment dismissing Mr. Dick's complaint for lack of subject matter jurisdiction is AFFIRMED.

Submitted June 18, 2003.
Decided June 19, 2003.

/s/ Richard D. Cudahy
RICHARD D. CUDAHY
CIRCUIT JUDGE

/s/ Richard A. Posner
RICHARD A. POSNER
CIRCUIT JUDGE

/s/ Kenneth F. Ripple
KENNETH F. RIPPLE
CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RAYMOND DICK,

Plaintiff-Appellant,

VS. CASE NO. 02-4120

HOWARD E. TOWLES,

Defendant-Appelle.

_____/

ORDER

On consideration of the Plaintiff-Appellant's petition for rehearing filed on July 1, 2003, the judges on the panel have voted to deny the petition. Accordingly,

It is ORDERED that the petition for rehearing is DENIED.

July 31, 2003.

/s/ Richard D. Cudahy
RICHARD D. CUDAHY
CIRCUIT JUDGE

/s/ Richard A. Posner
RICHARD A. POSNER
CIRCUIT JUDGE

/s/ Kenneth F. Ripple
KENNETH F. RIPPLE
CIRCUIT JUDGE

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

U.S. Const. Amend. I.

Section one of the Fourtheenth Amendment states:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND DICK,

Plaintiff,

VS. CASE NO. 02 C2909

HOWARD E. TOWLES,

Defendant.

_____/

COMPLAINT

The District Court has jurisdiction pursuant to 28 U.S.C. && 1331 and 1367. The complaint invoke the provision of 735 ILCS 5/13-214.3, Illinois Supreme Court Rule 137 (155 Ill. R. 137), and Fed. R. Civ. P. 9(b) and 11.

COUNT I – ORAL CONTRACT AGREEMENT

Plaintiff, Raymond Dick, complaining of Defendant Howard E. Towles' breach of an Oral and Written contract and conspiracy to perpetrate Fraud upon the Court by concealing the breach, state [in pertinent part] as follows:

1. Plaintiff and Defendant had freely entered into an Oral contract agreement.

2. Plaintiff has a legitimate claim of entitlement in the Oral contract agreement, pursuant to 735 ILCS 5/13-214.3,

protected by the due process clause of the Fourteenth Amendment to the United States Constitution.

3. Defendant Towles breach the Oral Contact agreement.

4. In December of 1999, Defendant Towles and Mr. Carl M. Walsh committed an overt act of fraud in furtherance of the conspiracy to deprive Plaintiff of his property rights.

5. On the above date, the act of Defendant Towles and his agent Mr. Walsh was tortious or unlawful in character.

6. On the above date, and prior to Plaintiff did not have a full and fair opportunity to litigate his claim of entitlement in the State law remedies.

7. Plaintiff has availed himself of the remedies guaranteed by State law.

8. That the State remedies were arbitrary, irrational and inadequate to protect the Plaintiff's property rights.

9. As a direct and proximate cause of Defendant Towles, the Plaintiff filed a Six Count Malpractice action for breach of an Oral and a Written contract, with the Clerk of the Circuit Court on January 31, 1995. The Complaint was docketed as # 95 L 00158 .

79. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant Towles, the Plaintiff is entitled to a judgment in his favor as a matter of law.

WHEREFORE, Plaintiff, Raymond Dick, prays judgment in his favor and against the Defendant Howard E. Towles for the sum of Three Million dollars (3,000,000.) in compensatory damages, and any other relief as the Court deems equitable and just for all of the reasons stated above.

COUNT II—WRITTEN CONTRACT AGREEMENT

1-9. Plaintiff, Raymond Dick, re-alleges and incorporates by reference herein paragraphs 1-9 as if fully set forth herein.

10. Plaintiff has a legitimate claim of entitlement in the Written Contract Agreement pursuant to 735 ILCS 5/13-214.3, protected by the Due Process Clause of the Fourteenth Amendment.

12. That on or about June 1, 1992, Defendant Towles as agent for the Plaintiff agreed to file a civil complaint in the United States District Court.

16. That on August 18, 1992, Defendant Towles filed a Civil Complaint in the United States District Court.

29. That on August 28, 1992, the Plaintiff signed the attorney-client contract agreement.

30. That on August 28, 1882, Defendant Towles signed the attorney-client contract agreement.

40. That Defendant Towles dismissed the complaint on September 18, 1992.

WHEREFORE, Plaintiff, Raymond Dick, prays judgment against Defendant Howard E. Towles for the sum of Five Million dollars ($5,000,000.00) in actual or compensatory damages and all of the relief the Court deems equitable and just.

COUNT III—UNLAWFUL CONSPIRACY-FRAUD

1-10. Plaintiff, Raymond Dick, re-alleges and incorporates by reference paragraphs 1-10 as if fully set forth herein

11. Defendant Towles knowingly, recklessly, intentionally and unlawfully conspired with his agent Mr. Walsh, in committing fraud upon the Court and Plaintiff, as a basis

to avoid liability for the admitted breach of the Oral and Written Contract agreement.

102. As a direct and proximate result of Defendant Towles, on December 10, 1999, in the trial court, Mr. Walsh testified: Judge, with due respect, I was not even in this case when that Case Management Order was entered, although I don't in any way say that that doesn't mean it exist or was affective...

103. Mr. Walsh's testimony: although I don't in any way say that that doesn't mean it exist or was affective, constitute fraud, by intent to deceive, and or omission because of the following:

a. Mr. Walsh was served three Affidavits by Plaintiff on June 15, 1999;
b. All three Affidavits testified that Defendant Towles, on August 20, 1998, signed the Case Management Order of judgment to be entered by the court;
c. Mr. Walsh was also served notice of the Case Management Order on August 13, 1999 an twice on November29, 1999.

104. Defendant Towles made no effort to correct Mr. Walsh's statement or to set the record straight that a Case Management Order was entered by the court on August 20, 1998.

110. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendant Towles, the Plaintiff is entitled to judgment in favor as a matter of law.

WHEREFORE, the Plaintiff, Raymond Dick, prays judgment against Defendant Howard E. Towles for the sum of Four Million dollars ($4,000,000.00) in actual or compensatory damages, and any other additional relief as the Court deems equitable and just, for all of the reasons stated above.

/s/ Raymond Dick
RAYMOND DICK
2520 E. 74th St.
Chicago, Ill. 60649

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND DICK,

Plaintiff,

VS. CASE NO. 02 C2909

HOWARD E. TOWLES,

Defendant.

PLAINTIFF'S RESPONSE TO ORDER OF COURT

Plaintiff, Mr. Raymond Dick ("Mr. Dick") states that his complaint should not be dismissed because: the question, whether Plaintiff has a legitimate claim of entitlement, is a federal question within the provision of 28 U.S.C. && 1331 and 1367; Property for purpose of the due process clause of the fourteenth amendment is a legitimate claim of entitlement; The complaint alleges Mr. Dick and Defendant, Howard E. Towles, ("Mr. Towles") had freely entered into an Oral and Written Contract agreement. Mr. Dick has a legitimate claim of entitlement in the oral and written contract agreement, pursuant to 735 ILCS 5/13-214.3, protected by the due process clause of the Fourteenth Amendment. Board of Regents v. Roth, 408 U.S. 564,577 (1972);

> [T]hough state law creates [a party's] cause of action, its cause might still arise under the law of the United

States if a well-pleaded complaint establish that its right to relief under state law requires resolution of substantial question of federal law. City of Chicago, v. Inter. College of Surgeons, 522 U.S. 156, 164 (1997), and the district courts have original jurisdiction under federal question statute over cases arising under the constitution, laws, or treaties of the United States. § 1331, City of Chicago, *Id.* at 163.

Mr. Dick, has a legitimate claim of entitlement where the State law remedies are inadequate to protect Mr. Dick's property rights. And minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the precondition to adverse officials action. Logan v. Zimmerman Bush Co, 455 U.S. 422, 432.

WHEREFORE, Plaintiff, Raymond Dick respectfully submit the complaint should not be dismissed.

CERTIFICATE OF SERVICE

The under signed, Raymond Dick , certifies that a copy of the foregoing... was served upon the above Defendant, [23754 Kurt Lane, Crete, Ill. 60417] by placing same in an envelope with proper postage prepaid and by depositing same in the U. S. Mail at 7436 South Exchange Ave, Chicago, Ill., before 5:00 p.m., on May 29, 2002.

/s/ Raymond Dick
RAYMOND DICK
2520 E. 74th Street
Chicago, Ill. 60649

IN THE UNITED STATES DISTRICT COURT
FOR RHE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND DICK,

Plaintiff,

VS. CASE NO. 02 C2909

HOWARD E. TOWLES,

Defendant.

_____/

PLAINTIFF'S MOTION TO VACATE
DISMISSAL JUDGMENT

Plaintiff, Raymond, ("Mr. Dick") respectfully request this court to reconsider and vacate its order, pursuant to Rule 59 (FRCP).

Mr. Dick argues that: On June 4, 2002, the court's dismissal of the complaint appears to be based on the determination that the district court's jurisdiction is precluded by res judicata; The court did not consider the question, whether Mr. Dick has a legitimate claim of entitlement, which is a federal question within the provision of 28 U.S.C. §§ 1331 and 1367. See Board of Regents of State College v. Roth, 408 U.S. 564, 577 (1972); City of Chicago, 522 U.S. at 164. On June 4, 2002, the court's dismissal appears to be based on

the determination that the fourteenth amendment applies only to the State and that Mr. Dick cannot show how Mr. Towles implicated the fourteenth amendment. This is Not the issue before the court. The Complaint alleges: On December of 1999, and prior to, Mr. Dick did not have a full and fair opportunity to litigate his claim of entitlement in the state law remedies. Mr. Dick had availed himself of the remedies guaranteed by state law, and that the State remedies were arbitrary, irrational and inadequate to protect Mr. Dick's property rights.

[T]o determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate. Zinermon v. Burch, 494 U.S. 113, 125-26 (1990).[1]

Similarly, the Seventh Circuit recognized the potential for substantive due process claim requires that, in addition to alleging that the decision was arbitrary and irrational, plaintiff must also show either a separate constitutional violation or the inadequacy of state law remedies. New Burnham Prairie Homes v. Village of Burnham, 910 F. 2d 1474, 1481 (7th Cir. 1990).

Since the Court apparently based it's ruling on the finding that Mr. Dick' s complaint did not raise a federal question, the court's finding conflicts with City of Chicago,

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[1] The Supreme Court concluded that: minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the state may have specified its own procedures that it may deem adequate for determining the preconditions to advance official action Logan v. Zimmerman Brush Co., 455 U.S. 422, 432 (1983).

Zinermon, Board of Regents, and New Burham, it would appear that this order should be vacated.

Mr. Towles, Defaulted By Failing to appear in a timely manner. Mr. Towles was served in this case , on April 27, 2002.[2]

Since the district court has jurisdiction prusuant to federal question under Section 1331 and 1367. Board of Regents v. Roth, 408 U.S. at 577; City of Chicago, 522 U.S. at 164, Rule 4 (FRCP), it would appear appropriate the order, of June 4, 2002, should be vacated.

Res Juducata Does Not Apply To This Case

The court's order, of May 7, 2002, stated that Mr. Dick was to appear in courtroom #1419, and show cause, if any, why this cause should not be dismissed, on June 4, 2002, for lack of Federal Jurisdiction. The order made no mention that Mr. Dick was to address any affirmative defense, that may be made by Mr. Towles.

Mr. Towles did not file his appearance and answer, to the complaint, in accordance with the Rule. Instead, Mr. Towles orally requested additional time to file a motion to dismiss, based on jurisdiction and res judicata.

The Supreme Court held that, it is clear that failure to give the petitioner notice of the pending [motion]

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[2] 20 days after April 27, 2002 is May 17, 2002, a Friday. Accordingly, Mr. Towles filing his appearance, on June 4, 2002, was in Default by 18-days.

violated the rudimentary demands of due process of law. Armstrong v. Manzo, 380 U.S.545, 550 (1963)

The Seventh Circuit held that, in the unlikely event that the state court action proves inadequate to protect the parties' federal rights, ordinary principles of res judicata and collateral estoppel would not prevent them from bringing their claims back before a federal court. Lumen Const., Inc. V. Brant Const. Co.,Inc.,780 F. 2d 691. 697 (7th Cir.1985), citing Allen v. McCurry, 449 U.S. 90, 101 (1980).

The Supreme Court has held that, Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, of fairness of procedures followed in prior litigation. Montana v. United States, 440 U.S. 147, 164 n. 11 (1979).

Since the court apparently based its ruling on the finding that Plaintiff's complaint is barred by doctrine of res judicata and this finding was incorrect, it would appear appropriate that this order should be vacated.

CONCLUSION

WHEREFORE, Mr. Dick respectfully request that this honorable court vacate its order, of June 4, 2002, dismissing the complaint.

Respectfully submitted
/s/ RAYMOND DICK
2520 E. 74th Street
Chicago, Ill. 60649
(773) 768-2399

NOTICE OF MOTION

TO: Carl M. Walsh
39 S. LaSalle St.
Suite 1400
Chicago, Ill. 60603.

Please Take Notice that I shall appear before the Honorable David H. Coar, or before such other Judge sitting in his place or stead, on the 18th day of June 2002 at 9:00 a.m., or as soon thereafter as Plaintiff may be heard and then and there present the attached Motion.

Dated this 10th day of June, 2002.

CERTIFICATE OF SERVICE

The undersigned, Raymond Dick, certifies that a copy of the foregoing Notice and Motion To Vacate, was serves upon the person named above at the address shown, on this 10th day of June, 2002.

/s/ Raymond Dick

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAYMOND DICK,

Plaintiff,

VS. CASE NO. 02 C2909

HOWARD E. TOWLES ,

Defendant.

_____/

RESPONSE TO ORDER OF JUNE 18, 2002 AND TO DEFENDANT'S MOTION TO DISMISS COMPLAINT

Plaintiff, Raymond Dick, ("Mr. Dick") request this Court sustain jurisdiction, and reconsider the order of June 18, 2002, because the June 18th order conflict with the June 4th order, Rule 8 (FRCP), 28 U.S.C. §§ 1331, 1367. The Motion herein state in pertinent part, the District Court failed to consider and ignored the facts: Defendant, ("Mr. Towles") failed to file his appearance as required by Rule 12(a) (FRCP). The order of June 18, 2002, giving Mr. Towles leave to file a motion to dismiss, conflict with the order of June 4, 2002; the right to recover under the constitution and laws of the United States; and whether Mr. Dick has a legitimate property interest, protected by the fourteenth amendment. A copy of the Written Contract was attached as Exhibit B; Redetermination of issue is

warranted if there is reason to doubt the quality. Extensiveness, or fairness of procedures following in prior litigation. Montana v.United States, 440 U.S.147, 164 n. 11 (1979). The affidavit of Mr. Dick was attached as Exhibit A. The affidavit testimony declares:

> On December 10, 1999, the Circiut Court did not consider the merits of Plaintiff's Motions, evidence or issues and entered summary judgment for defendant. ¶ 7
>
> On December 28, 2001, the appellate court did not consider the merits of Plaintiff's evidence or issues and affirmed the judgment of the circuit court. ¶ 8
>
> Plaintiff's petition for leave to appeal to the Illinois Supreme Court was denied April 3, 2002. ¶ 9

Procedural due process requires a two-step analysis: (1) Whether the plaintiff has been deprived of a protective interest and (2) what process is due. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982).

The District Court has Jurisdiction over the state law claims that form part of the same case or controversy. City of Chicago College of Surgeons, 522 U.S. 156, 165, (1997)

Rule 8(a)(2) requires that a complaint include only a short and plain statement of the claim showing the pleader is entitled to relief. Leatherman v. Terrant County Narcotics Unit, 507 U.S. 163, 168, (1993).

Illinois Courts have determined that for res judicata to bar a subsequent action, three criteria must be met: (1) there must be a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies. Downing v. Chicago Transit Authority, 162 Ill. 2d 70, 73, 642 N. E. 2d 456, 458, (1994); In addition, the party asserting the preclusion bears the burden of showing with clarity what was determined by the prior judgment. Jones v. City of Alton Illinois, 757 F. 2d 878, 885, (7th Cir. 1995); and [T]he general rule is that where a court, in the discharge of its judicial functions, vacate an order previously entered, the legal status is the same as if the order had never exist. Mitchell v. Joseph, 117 F. 2d 253, 255 (7th Cir. 1941) (collecting authorities); and in the prior federal case Plaintiff incorrectly submitted a jurisdictional statement (Exhibit C), under 28 U.S.C. § 1343.

It was not plaintiff's burden, to provide evidence concerning claims as to which defendant's motion for summary judgment was entered. Malhotra v. Cotter & Co., 885 F. 2d 1305, 1310, (7th Cir. 1989). In determining whether summary judgment was an adjudication on the merits, the Downing Court held that: when the basis for granting summary judgment bears no relationship to the

actual merits of the case, it would be inappropriate to apply the doctrine of res judicata to another party to the action. Downing, 162 Ill. 2d at 77. Furthermore, a court cannot Invoke the rule of estoppel by verdict or res judicata, on pure speculation, as to the finding of the trial court in the prior litigation. Jones 757 F. 2d at 885.

WHEREFORE, Mr. Dick respectfully request that this Honorable Court vacate the Order of June 4, 2002. Furthermore, the Court should deny Mr. Towles' motion To dismiss for all of the foregoing reasons.

Respectfully submitted

/s/ Raymond Dick
RAYMOND DICK
2520 E. 74TH Street
Chicago, Ill. 60649

TO: Carl H. Walsh
39 S. LaSalle St.,
Suite 1400
Chicago, Ill. 60603

CERTIFICATE OF SERVICE

The under signed, Raymond Dick, certifies that a copy of Mr. Dick's Response To Order of June 18, 2002 and To Mr. Towles' Motion To Dismiss was served upon Mr. Towles, by placing said in an envelope with proper

postage, prepaid and deposited in U.S. Mail at 7436 South Exchange Ave., Chicago, Ill., before 5:00 p.m. on July 17, 2002.

/s/ Raymond Dick
RAYMOND DICK

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RAYMOND DICK,

Plaintiff –Appellant,

VS. CASE NO. 02-4120

HOWARD E. TOWLES

Defendant-Appelle.

_____/

PETITION FOR REHEARING

I. THERE WAS NO EVIDENCE, IN THE RECORD, THAT THE STATE COURTS MADE A DETERMINATION ON PLAINTIFF'S INDEPENDENT CLAIM.

On June 4, 2002 the district court dismissed the action, on its own motion, for lack of jurisdiction. On October 29, 2002, the district court denied Mr. Dick's motion to vacate, holding that the Rooker-Feldman doctrine bars the claim, and denied Mr. Towles motion to dismiss.[1]

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[1] Mr. Towles refused to respond to two Orders to file a responsive brief...Thus; Mr. Towles has waived all issues in this court, and the district court, except subject matter jurisdiction. See Commodity Futures Trading Com'n v. Tokhein, 153 F.3d 474, 476 n. 3 (7th Cir. 1998)...

The Appeal Court overlooked the [law] and fact that: The District Court made no specific finding of facts to support its conclusion, as required by Rule 52 (FRCP)... Pullman-Standard v. Swint, 456 U.S. 273, 291-92 (1982).

Mr. Dick has a property interest, protected by the fourteenth amendment, that arose from two sources: (1) the Due Process Clause itself and (2) the law of the State. Ester House v. Felder, 910 F. 2d 1387, 1395 (7th Cir.1990), citing Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972). Property for the purpose of the due process clause of the fourteenth amendment, is a legitimate claim of entitlement. Board of Regents 408 U.S. at 577. A claim of entitlement is defined by existing rules of understandings that stems from an independent source as state law. *Id.*

Contract rights are a kind of property. Weinstein v. University of Illinois, 811 F.2d 1091, 1096 (7th Cir. 1987). Mr. Dick's property interest and minimum [procedural] requirements [are] not based upon Mr. Towles breach of duty, but on the Fourteenth Amendment. Thus, invoking § 1331.

The question whether a contract was made, is a federal question for purpose of the Contract Clause analysis. General Motors Corp. V. Romein, 503 U.S. 182, 287 (1992).

In analyzing a claim under the Due Process Clause of the Fourteenth Amendment requires a two-step analysis: (1) whether the plaintiff was deprived of a property protected interest; and (2) what process is due. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982), And Minimum [procedural] requirements [are] a matter of federal law. *Id.* at

432.

[The] federal courts' original jurisdiction over federal question carries with it jurisdiction over state law claims that derive from a common nucleus of operative fact, such that the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprise but one constitutional case. City of Chicago v. International College of Surgeons, 522 U.S.156, 164-165 (1997). Mr. Dick's complaint does, in fact, raise serious question, both of law and fact, which the district court can decide only after it has assumed jurisdiction. Bell v. Hood, 327 U.S. 678, 683-84 (1946).

Mr. Dick alleges, he did not have a full and fair opportunity to litigate his claim of entitlement in the state law remedies... I filed the complaint in state court, and the state refused to address any of the issues... raised by [Mr. Dick] in the state court. Mr. Dick's leave to appeal to the Illinois Supreme Court was denied, April 3, 2002.

II. THE DISTRICT COURT ERRED IN RELYING ON A VOID ORDER TO DENY THE MOTION TO VACATE THE DISMISSAL JUDGMENT.

[T]he general rule is that where a court... vacate an order previously entered, the legal status is the same as if the order had never exist. Geiger v. Allen, 850 F.2d 330, 332 (7th Cir. 1998), citing United States v. Jerry, 487 F. 2d 600 (3rd Cir. 1973). The order having become a nullity, no rights, constitutional or otherwise, can be considered as accruing from it. *Id.* at 607. See Morse H. Cone Memoral Hospital v. Mercury Construction, 460 U. S. 1 (1983):
[A]ssuming that for some unexpected reason the state

forum does turn out to be inadequate in some respect... it is true that Mercury could seek to return to federal court if it proved necessary; but that would be equally true if the District Court had dismissed the case. *Id.* at 28.

III. THE DISTRICT COURT ERRED IN DENYING THE MOTION TO VACATE WHERE THERE IS NO EVIDENCE, IN THE RECORD, THAT THE STATE SUMMARY JUDGMENT WAS ON THE MERITS.

Illinois Supreme Court disagree that a summary judgment, by definition, means a judgment on the merits.[2] Downing v. Chicago Transit Authority, 162 Ill. 2d 70, 77, 642 N. E. 2D 456 (1994). The party asserting the preclusion bears the burden of showing with clarity and certainty what was determined by the prior judgment... *Id.* at 885: Kramer v. Chemical Construction Corp., 455 U.S. 461, 481-82 (1982) (federal court to accept the rule chosen by the state from which the judgment is taken).

[T]he district court order conflict with Downing, Jones, and Kramer, because there is no evidence before this Court or the district court that the summary judgment, by definition, means a judgment on the merits.

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[2] [T]he Appeal Court without more, merely state: Mr. Dick then sued Mr. Towles in state court. The circuit court... ultimately granted summary judgment for Mr. Towles, and that ruling was affirmed by the Illinois appellate court. (App. 11).

IV. THERE WAS NO EVIDENCE, TO DISPUTE PLAINTIFF'S CLAIMS, THE STATE COURT DID NOT ADJUDICATE HIS CLAIMS. HE IS NOT SEEKING REVIEW OF THE STATE COURT JUDGMENT. THE DISTRICT COURT IN ERROR, BASED ITS DECISION ON PURE SPECULATION AND CONJECTURE TO DENY THE MOTION TO VACATE THE DISMISSAL JUDGMENT.

Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer. In he Matter of Murchison, 349 U. S. 133 , 137 (1955). [H]ostility and bias displayed by district court required reversal. Anderson v. Shepard, 856 F. 2d 741 (6th Cir. 1988).

Mr. Dick testified, I filed the complaint in the state court, and the state court refused to address any of the issues which were raised, by the petitioner, in the state court.

The district court stated, Plaintiff argues that he was deprived of due process as a result of the state court's decision violated his due process rights under the Fourteenth Amendment.

[T]he district court's conjecture was prejudicial. The Appeal Court order also conflict with Munchison and Anderson.

[T]he state refused to have a hearing on Mr. Dick's fraud allegation...

[I]ts own ruling in Long v. Shore Bank Development Corp., 182 F. 3d 548 (7th Cir. 1995), (quoting Wood v. Orange Count., 715 F. 2d 1543, 1547 (11th Cir. 1983), state:

> the Rooker-Feldman doctrine has been rejected based on the reasoning set forth in Wood, the federal litigants have pointed to some factor independent of the action of the opposing party that precluded the litigants from raising their federal claims during the state court proceedings. Typically, either some action taken by the state court or state court procedures in place have formed the barriers that the litigants are incapable of overcoming in order to present certain claims to the state court. Long, 182 F. 3d at 558.

In Lynk v. LaPort Superior Court, 789 F. 2d 554, 556 (7th Cir. 1986); Brooker v. Weaver, 305 F. 3d 660, 667 (7th Cir. 2002). In this case...the state refused to have a hearing on Mr. Dick's fraud allegation...

> [A]n issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in the state court proceedings. Absent such an opportunity, it is impossible to conclude that the issue was inextricably intertwined with the state court judgment. Long, 182 F. 3d at 558.

Mr. Dick has pointed to several factors above, independent of the action of the opposing party that precluded Mr. Dick from raising his federal claim during the state court proceedings, and claims that are not inextricably

intertwined with the state court judgment. Thus, the Rooker-Feldman doctrine is not applicable in this case and reversal is warranted.

CONCLUSION

For all the foregoing reasons, Mr. Dick respectfully request that his petition, for hearing, be granted and the order dismissing the complaint and denying the motion to vacate be reversed.

Respectfully submitted
/s/ Raymond Dick
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CERTIFICATE OF SERVICE

The undersigned, Raymond Dick, certifies that two copies of the Petition for Rehearing, were served on defendant named above, in an envelope with sufficient postage affixed, to the address indicated, and deposited envelope in U.S. Mail. Post office located at 7436 So. Exchange Av., Chicago, before 5:00 p.m. on July 2, 2003.

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